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In the

Supreme Court of the United States

OCTOBER TERM, 1954

No. 527

HAZEL ANNA WOLF, *Petitioner,*

vs.

JOHN P. BOYD, District Director, Immigration and Naturalization, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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THE ARGUS PRESS, SEATTLE

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HAZEL ANNA WOLF, *Petitioner,* vs. JOHN P. BOYD, District Director, Immigration and Naturalization, *Respondent.*	No.....

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, which directed that the judgment of the district court be affirmed that petitioner's petition for a writ of *habeas corpus* and for other relief in a deportation matter be denied.

OPINION BELOW

The opinion of the Court of Appeals is reported in the advance sheet, 215 F.(2d)—No. 2,377 (Appended).

The opinion of the District Court (Memorandum Opinion R. 32-38) has not been reported.

JURISDICTION

Judgment of the Court of Appeals herein was filed and entered on August 10, 1954.

Order Denying Petition for Rehearing was made and entered on October 11, 1954, the order stating: "It is or-

dered that the petition of appellant, filed September 14, 1954, and within time allowed therefor by rule of court, and valid extensions thereof, for a rehearing of the above cause be, and hereby is denied."

The jurisdiction of this court is invoked under 28 U.S.C. 1254 (1) (62 Stat. 928) providing that "Cases in the courts of appeal may be reviewed by the Supreme Court * * * (1) By writ of certiorari * * *."

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent provisions are set forth in the Appendix, *infra,* pp. 15-16.

QUESTION PRESENTED

Does power exist, legally or constitutionally, for the deportation of a person who came to the United States in 1922, as a "permanent resident," and has at all times thereafter intended and attempted to become a United States citizen, and who has never violated any condition for her continued residence in the United States?

STATEMENT OF THE CASE

Petitioner, Hazel Anna Wolf, was born in Canada, and entered the United States on December 26, 1922, for permanent residence. She has resided continuously in the United States since that time, and has at all times intended and attempted to become a United States citizen (R. 3, 12).

Thereafter, petitioner was arrested by respondent, and deportation proceedings were held looking toward her deportation from the United States under the provisions of 8 U.S.C. Section 137, being the Act of Octo-

ber 16, 1918, as amended by the Alien Registration Act of 1940 (54 Stat. 670), and prior to the amendment of said Act by the Internal Security Act of 1950 (R. 22).

Following a hearing the Assistant Commissioner, Adjudications Division, Department of Justice, Immigration and Naturalization Service, adopted the recommended order and decision of the Hearing Officer "that respondent was during 1937 and 1938 a member of the Communist Party," and concluded as a matter of law that under the Act of October 16, 1918, as amended, that respondent was subject to deportation (R. 26).

Petitioner exhausted administrative remedies (R. 13). When respondent was held for deportation the within action was instituted in Federal District Court (R. 2, 12).

The court then ruled in its conclusions of law, and thereby presents the issues now raised, that

> "IV. Past membership in the Communist Party is, as a matter of law, a sufficient ground for deportation of an alien pursuant to the provisions of 8 U.S.C. 137 as it existed prior to amendment of said section by Section 22 of the Internal Security Act of 1950." (Conclusions of Law, R. 27) and
>
> "The Act of October 16, 1918, as amended by the Act of June 28, 1940 (8 U.S.C. 137) providing for deportation of aliens who, after entry, become members of an organization which advocates the overthrow of the Government of the United States by force or violence is not unconstitutional as being in violation of the First Amendment, the due process clause of the Fifth Amendment, and the *ex post facto* prohibitions of Article 1, Section 9, Clause 3 of the Constitution." (R. 28)

REASONS FOR GRANTING THE WRIT

This case involves a deportation case of a type that shocks the sense of fair play—"which is the essence of due process." *Galvan v. Press,* 347 U.S. 522, 74 S.Ct. 737. It also presents a question of the greatest importance which has not been definitively settled by this Court.

The Court having granted *certiorari* in *Harisiades v. Shaughnessy,* 342 U.S. 580, and *Galvan v. Press* (*supra*) 347 U.S. 522, should grant *certiorari* in this case because additional and different, and more compelling facts are presented, and a particular argument is presented for the first time on the issue of power of deportation when the non-citizen has been admitted (1) as a permanent resident, (2) at all times intended and attempted to become a citizen of the United States, (3) has resided continuously in the United States for 32 years and (4) has never violated a condition imposed as a basis for such continued residence. With reference to fact numbered (4) it is especially significant that the District Court was sufficiently doubtful as to whether credible or substantial evidence had been presented to prove that the Communist Party in the State of Washington in 1937 and 1938 advocated the overthrow of the Government of the United States by force and violence, and therefore ruled that as a matter of law, membership in the Communist Party in 1937 and 1938, regardless of the true nature of the organization that petitioner joined, was a sufficient ground for deportation. *Schneiderman v. U. S.,* 320 U.S. 118.

The specific issue that Petitioner believes the Court

should decide, and which, it is submitted, has not been settled by this Court is whether or not Congress can admit non-citizens to the United States as "permanent residents" on certain conditions then existing, and thereafter, regardless of time, or to what extent that non-citizen has relied upon such admission as being permanent so long as no express conditions are violated, deport such non-citizen on the claim that since the power of exclusion is all inclusive, that therefore the power of deportation is also without limit.

ARGUMENT

Petitioner presents legal argument and reasons herein which it appears have never been settled by this Court, and, it is submitted the issue is of such importance that it should be settled forthwith. Every present or prospective non-citizen resident of the United States may be affected.

To state the issue demonstrates the importance of the question. The issue is whether or not Congress has the legal or constitutional power, co-equal with the power of exclusion, to deport non-citizens at any time, and regardless of whether or not the non-citizen has violated any condition expressed for the continued legal residence in the United States.

This was not specifically decided in *Harisiades v. Shaughnessy,* 342 U.S. 580 (*supra*). In fact in that case the Court specifically held that the aliens there involved violated an express condition, and stated, "They were not caught unawares by a change of law. There can be no contention that they were not adequately forewarned

both that their conduct was prohibited and of its consequences." That is not the case here.

It is true that in *Galvan v. Press* (*supra*) 347 U.S. 522, the court indicated that whether or not Galvan knew that he was violating some condition was irrelevant, but in the instant case we contend (1) that petitioner did not violate any condition, and (2) we present a specific legal argument not previously considered by the Court.

The Right and Power to Deport

The right of a nation to deport when considered as a power arising from the power or right to admit aliens is not in dispute. The failure to distinguish the true nature of the right is the cause of the court's failure to see that the precise issue presented here has not been decided.

In *Nishimura Ekiu v. United States,* 142 U.S. 651, a leading case, the court states:

> "It is an accepted maxim of International Law, that every sovereign nation has the power as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and *upon such conditions* as it may see fit to prescribe." (Emphasis added)

The leading case, *Fong Yue Ting v. United States,* 149 U.S. 707, states:

> "The right of a nation to expel or deport foreigners who have not been naturalized or *taken any steps towards becoming citizens* of the country, *rests upon the same grounds* as the power of the government to exclude foreigners from the country * * *." (Emphasis added)

In connection with the passage of the Immigration and Nationality Act of 1952, 66 Stat. 163, 8 U.S.C. Sections 1101 *et seq.,* in stating the general power it was said:

> "The power of Congress to control *immigration* stems from the sovereign authority of the United States as a nation and from the constitutional power of Congress *to regulate commerce* with foreign nations. Every sovereign nation has the power, inherent in soveignty and essential to self-preservation, to forbid entrance of foreigners within its dominions, or *to admit them only in such cases and upon such conditions as it may see fit to prescribe.* Congress may exclude aliens altogether or *prescribe terms and conditions upon which they may come into or remain in this country.*" House Report No. 1513, March 13, 1952, P. 5. (Emphasis added)

Thus, importation of persons is a type of commerce called immigration. Constitutionally, the commerce power is involved. Congress cannot legally or constitutionally prescribe terms and conditions upon which residence in the country depends, and then claim the power, as an incident of the power to admit on condition in the first instance, to deport for any reason, and particularly one unrelated to any condition stated on admission. (*Cf., United States v. Curtiss-Wright Export Corp.* (1936) 299 U.S. 304).

In the *Chinese Exclusion* case (1889) 130 U.S. 581, and *Nishimura Ekiu v. United States* (1892) 142 U.S. 651, it was then decided that the power to exclude arises from the nature of immigration and the *Ekiu* case (*supra*) relied upon the case of *Hilton v. Merritt* (1884)

110 U.S. 97, which involved the importation of goods, and also shows the interconnection between the importation of goods, and the immigration of persons.

When this is understood it becomes apparent that the power of the government to deport is a power incidental to the power to exclude, and demonstrates the correctness of the court's opinion in *Bridges v. Wixon,* 326 U.S. 135, at page 160, which recognizes that by the terms of the Constitution persons who are legally resident in the United States, regardless of citizenship, are entitled to the substantive freedoms guaranteed in the Bill of Rights.

Petitioner submits, and believes that the Court has never considered or, at least, discussed, the argument in any prior opinion, that deportation of a settled resident, here pursuant to act of Congress as a "permanent resident," is not a plenary power, and that the power of deportation in the first place is only an incident of the power with respect to immigration, and, since, clearly, such a settled resident is legally entitled to the same treatment as the importer of goods on condition, and that the legal power to deport depends upon the violation of a condition imposed at the time of entry, or condition precedent, and cannot rest upon an alleged violation of a condition imposed subsequent to entry, or for any act performed prior to such act being proscribed.

The first case in the Supreme Court that specifically involved deportation rather than entry, or expulsion because of illegal entry, or the question of proof of lawful entry, was *Zakonaite v. Wolf* (1912) 226 U.S. 272.

(For a discussion of all prior leading cases see Boulin, "The Settler Within Our Gates," 26 New York University Law Quarterly 266-290, 451-474, 634-662.)

The *Zakonaite* case (*supra*) involved the Act of 1907, 34 Stat. 900, which provided that:

> " * * * any alien woman * * * who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years, after she shall have entered the United States *shall be deemed* to be unlawfully within the United States and shall be deported. * * * "

Certainly this can be logically interpreted only as the creation of a presumption that an alien (and not of a type to be able to claim settled residence) had violated a condition precedent, the authority for which is unquestioned, rather than the violation of a condition imposed subsequent to entry. This is true particularly in that the court stated on page 275:

> "It is entirely settled that the authority of Congress to prohibit aliens from coming within the United States, and to regulate their coming, includes authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend * * *."

In support of this quotation the Court cites seven cases, none of which involved the expulsion of a lawful permanent resident alien. The second case cited is *United States v. Zucker* (1896) 161 U.S. 475, which did not involve immigration, but upheld a subsequent forfeiture of goods that had been allowed entry because of fraudulent concealment of their value *at the time of entry.*"

Certainly the goods in the *Zucker* case (*supra*) could not have been forfeited without the violation of a condition at the time of entry. What can be the origin of the power over a permanent resident of the United States to deprive her of "all that makes life worth living" without the violation of any condition?

When the power of deportation is seen in the light of a violation of a condition it is easy to see, as we shall show, why the *ex post facto* provision of the constitution was not held to apply. The case of *Bugajewitz v. Adams* (1913) 228 U.S. 585 involved the expulsion of a woman found in a house of prostitution, and was brought pursuant to the provisions of the Act of 1910, 36 Stat. 265, which eliminated a three-year limitation under the 1907 Act. The deportation order was contested upon the constitutional ground that this was an *ex post facto* law, and upon the ground that the Act deprived the alien of her right to jury trial, etc. Justice Holmes dealt with the *ex post facto* argument by saying:

> "* * * The prohibition of *ex post facto* laws * * * has no application * * * and with regard to the petition, *it is not necessary to construe the statute as having any retrospective effect.*" (at page 591)

This only has meaning because the alien violated a condition existing at the time of entry since the Act of 1903 (32 Stat. 1213) which was in effect in 1905 when the alien entered the United States, provided for the expulsion of prostitutes, and since the 1910 Act merely struck out the three-year statute of limitations the court must necessarily have inferred that she could have been expelled or been excluded at the threshold under

the then existing law for being a prostitute. Otherwise the statement that it is unnecessary to construe the statute as having any retrospective effect is meaningless, or patently erroneous.

Further, in that case, there could be no pretense that after a mere five-year stay, with no family, and considering her criminal activity while here, that she had become a rooted settler.

As had been indicated, and discussed fully in the Boudin article (*supra*) 26 New York Univ. Law Quarterly 266-290, 451-474, 634-662, and mentioned in "Due Process in Deportation," 29 Washington Law Review 219, the reason for the uniform *dicta* in the prior cases has been the "imaginary precedents" of *The Chinese Exclusion* and *Fong Yue Ting* cases (*supra*), and the *dicta* of later cases which were based upon the former.

To conclude, it is submitted that the *implied* authority of deportation cannot be given priority over the express guarantees of the First, and Fifth Amendments of the United States Constitution, and Article I, Section 9, of the United States Constitution prohibiting *ex post facto* laws.

It is also submitted that there is no rational basis for the arbitrary preference for the natural born among persons, all of whom have acquired roots in the United States as a result of permanent residence, particularly since all persons in the United States (except the America Indians) are either immigrants, or the descendants of immigrants, and therefore this class discrimination is a denial to deep rooted residents of

the equal protection of our laws, and as such should be held a denial of due process of law under the 5th Amendment to the Constitution.

Finally, it is submitted that if unilateral conditions cannot be added to a contract governing property rights, then surely they cannot be imposed upon a status the loss of which may well deprive one of "all that makes life worth living." Human and personal rights are at least as important as a person's right to property.

CONCLUSION

The Court has indicated that its decisions are foreclosed by a "whole volume" of history. Yet the brief examination of that volume of history in this petition indicates that the Court has not considered the question of the deportation *power* as an incident of the exclusion power in which, as in matters of commerce, it is the *violation* of *conditions* which are legally imposed which provides the legal basis for deportation or the forfeiture of goods in commerce.

Hazel Anna Wolf relied upon her grant of a status as a "permanent resident." Is it not obvious that she would never have accepted that status, directly contributed to this nation, made her home here and become a mother, and in turn a grandmother in this country, if she could have foreseen that through no actual fault of her own she could, as the result of some later unilateral condition, be separated from her home and family? Does this not prove that it is fallacious to argue that because deportation is an incident of exclusion, and the power of exclusion is plenary, that therefore the power of deportation is plenary? If this sylogism were true,

then even the naturalized citizen could be deported for any reason that Congress might hereafter state. No, it is clear, deportation must be considered as a part of the exclusion power, and in which the condition is stated at the time of admission.

A wealth of authority supports this contention.

For the reasons stated, it is respectfully submitted that this petition for a writ of *certiorari* should be granted.

Respectfully submitted,

DAVID REIN,
Attorney for Petitioner.

C. T. HATTEN,
Of Counsel.

APPENDIX A

STATUTE INVOLVED

The Act of October 16, 1918 (40 Stat. 1012, c. 186, Section 1), as amended June 5, 1920 (41 Stat. 1008, c. 251), June 28, 1940 (54 Stat. 670, 673, c. 439, Title II, Sec. 23); 8 U.S.C. 137.

(This Act was later amended by the Act of September 23, 1950, 64 Stat. 1006, c. 1024, Title I, Section 22, and repealed by Section 403 (a) (16) of the Immigration and Nationality Act, P.L. 414, 82nd Cong. 2d Sess.)

"Any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States:
* * *

"(c) Aliens who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or all forms of law * * *

"(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue or display, any written or printed matter of the character described in subdivision (d)" (advising, advocating, or teaching the overthrow by force or violence of the Government of the United States)
* * *

"(g) Any alien who was at the time of entering the United States or has been at any time thereafter, a

member of any one of the classes of aliens enumerated in this section, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in Sections (enumerated) of this title. The provisions of this section shall be applicable to the classes of aliens mentioned therein, irrespective of the time of their entry into the United States."

Opinion Below.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

HAZEL ANNA WOLF, *Appellant*, vs. JOHN P. BOYD, District Director Immigration and Naturalization, *Appellee*.	No. 13,870
GEORGE LUCKMAN, *Appellant*, vs. JOHN P. BOYD, District Director Immigration and Naturalization, *Appellee*.	No. 13,871
	Aug. 10, 1954

Appeals from the United States District Court for the Western District of Washington, Northern Division.

Before DENMAN, Chief Judge, STEPHENS and POPE, Circuit Judges.

POPE, Circuit Judge.

The Wolf Case

Hazel Anna Wolf was born in Canada; she entered the United States December 26, 1922, for permanent residence and at the time of the institution of the proceedings here referred to she was a resident of Seattle, Washington. On May 31, 1949, she was arrested pursuant to a deportation warrant charging that she was an alien subject to deportation from the United States pursuant to 8 U.S.C.A. Sec. 137, as amended by the Alien Registration Act of 1940, 54 Stat. 670, in that she was after entry a member of an "organization, association, society, or group that believes in, advises, advo-

cates or teaches the overthrow by force or violence of the Government of the United States.'"[1]

Deportation hearings were commenced on June 19, 1950, were continued from time to time and concluded on February 12, 1951.[2] During the course of such hearings the appellant refused to testify. The hearing officer made findings and decision adverse to appellant, and thereafter in due course, the appropriate officer of the Immigration and Naturalization Service adopted the Hearing Officer's recommendation and made findings that appellant was a voluntary member of the Communist Party of the United States during the years 1938-1939, and that during the period of appellant's membership therein such Party advocated and taught the overthrow by force and violence of the Government of the United States, and that such party was an organization that circulated and distributed printed matter advocating the overthrow by force and violence of such government.

Upon such findings it was concluded and ordered that appellant was subject to deportation. Appellant appealed to the Board of Immigration Appeals from the order pursuant to such findings and conclusions but the appeal was dismissed and her deportation

---

[1] The language thus quoted is that of the Act.

[2] The record shows that during the course of the hearing and on the date last mentioned the Government lodged an additional charge under Section 22 of the Internal Security Act of 1950, which was based upon the brief allegation that petitioner was an alien who subsequent to entry became a member of or affiliated with the Communist Party of the United States. The findings disclosed and the parties are agreed that the deportation order here under review was based upon the provisions of the statute as it stood prior to the 1950 Act.

ordered. The appellant then filed in the court below a petition for a writ of *habeas corpus* allegeding that she was unlawfully held in custody by the respondent pursuant to such order of deportation. An order to show cause was issued and after a hearing upon the return filed by the respondent and the reply to such return the court below made findings and conclusions holding that the deportation hearing record supported the findings, conclusions and order made on behalf of the Immigration and Naturalization Service and entered an order dismissing the writ of *habeas corpus* and the order to show cause thereon upon the merits.[3]

No question is raised here as to the sufficiency of the evidence to sustain the findings of the Immigration and Naturalization Service (made on its behalf by the Assistant Commissioner). The appeal presents but two specifications of error. The first is based upon a conclusion of the trial court that: "Past membership in the Communist Party is, as a matter of law, a sufficient ground for deportation of an alien pursuant to the provisions of 8 U.S.C.A. 137 as it existed prior to amendment of said section by Section 22 of the Internal Security Act of 1950." It is contended that this is an erroneous statement of law in that Title 8 U.S.C.A. 137 as it existed prior to the amendment of 1950 required proof that the alien had been a member of an organization that advocated and taught the overthrow of the Government of the United States by force and violence.

We find it wholly unnecessary to consider this assignment of appellant. As previously stated, the administrative findings disclose not merely that appellant was

[3]Appellant also sought declaratory relief but that portion of her petition was dismissed for want of an indispensable party, and no question is here presented with respect thereto.

a member of the Communist Party of the United States in 1938, but that during that period such Party advocated and taught the overthrow of the Government of the United States by force and violence and circulated and distributed printed matter so advocating. The trial court in its findings specifically recited that such findings had been made and were the basis for the deportation order.

It is therefore apparent that there was no attempt to base an order of deportation upon a mere finding of Communist Party membership without a finding that such Party was an organization that advocated and taught the overthrow of the Government of the United States by force and violence. Thus we are not called upon to determine whether the questioned conclusion of the trial court is correct as an abstract proposition of law.[4]

Appellant's second and final contention is that: "Deportation for the alleged commission of an act which Congress did not impose as a condition to a continuation of 'permanent' residence in the United States at the time the non-citizen established such 'permanent' residence in 1922 is either a denial of substantive due process and completely without the constitutional power of Congress or it is in violation of the First Amendment, and the *ex post facto* prohibitions of Article 1, Section 9, of the Constitution of the United States." This contention was expressly rejected in *Harisiades v. Shaughnessy,* 342 U.S. 580. The reaffirmation of the principles there expressed in *Galvan v. Press,* 347 U.S. 522, leaves no foundation whatever

[4]We are likewise not here required to express any opinion as to whether *Martinez v. Neelly,* 7 cir., 197 F. 2d 462, affirmed by an equally divided court, 344 U.S. 916, supports such a conclusion.

for the appellant's effort to distinguish or explain away the *Harisiades* case.

The judgment in No. 13,870 is therefore affirmed.

The Luckman Case

The appeal in No. 13,871 presents precisely the same questions. Luckman, like Wolf, is a resident of Seattle, Washington. He was a native of Austria, Hungary, and entered the United States in 1907. Upon the hearing pursuant to the deportation warrant in his case, it was found that he was a member of the Communist Party of the United States during a period of 1937 or 1938, and that during such period of his membership such Party "was an organization which advocated and taught the overthrow of the Government of the United States by force and violence" and was an organization "which distributed printed matter advocating the overthrow of the Government of the United States by force and violence."

In the case of Luckman, as in that of Wolf, no question is raised as to the sufficiency of the evidence to support those findings. The specifications of error here are identical with those made in the case of Wolf above mentioned, and in all other respects the facts of the two cases are the same.

For the reasons we have stated in consideration of the appeal in No. 13,870 the trial court was obliged to hold as it did that the petition for a writ of *habeas corpus* and for other relief of appellant Luckman was without merit.

The judgment in No. 13,871 is therefore likewise affirmed.

(Endorsed:) Opinion. Filed Aug. 10, 1954.

Paul P. O'Brien, Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 527

HAZEL ANNA WOLF, PETITIONER

v.

JOHN P. BOYD, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 41–45, Pet. 17–21) is reported at 215 F. 2d 377. The opinion of the District Court (R. 32–38) has not been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 10, 1954 (R. 46). A petition for rehearing was denied on October 11, 1954 (R. 47). The petition for a writ of certiorari was filed January 10, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether Congress has constitutional power to provide for the deportation of aliens who were formerly members of an organization advocating the violent overthrow of the government.

STATUTE INVOLVED

The Act of October 16, 1918, 40 Stat. 1012, as amended by the Act of June 5, 1920, 41 Stat. 1008, and by the Alien Registration Act of 1940, 54 Stat. 670, 673; 8 U. S. C. (1946 ed.) 137, in pertinent part, provides:

> Sec. 1. That any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, * * *.
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> Sec. 2. Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in section 1 of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported * * *. The provi-

sions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

STATEMENT

Petitioner, who was born in Canada, entered the United States in 1922 (R. 25). Deportation proceedings were initiated against her on May 31, 1949, on the ground that she was deportable under the Act of October 16, 1918, as amended[1] (*supra*, pp. 2–3) (R. 25). After hearings, at which she refused to testify in her own behalf, she was found to have been a voluntary member of the Communist Party during the years 1938 and 1939 (R. 26). She was thus held deportable under the Act of 1918, as amended, as an alien who had been, after entry, a member of an organization that advocated the overthrow of the government

[1] The Act of October 16, 1918, as amended, was repealed by Section 403 (a) (16) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 279, 8 U. S. C. 137, effective December 24, 1952. However, the deportation proceedings, which were instituted before the repeal date, are not affected by the repeal. See Section 405 (a) of the 1952 Act, 66 Stat. 280, 8 U. S. C. 1101 note. The subject matter of the Act of October 16, 1918, as amended, is now covered by Sections 201 *et seq.* of the 1952 Act, 66 Stat. 175, 8 U. S. C. 1151 *et seq.*

Although during the course of the deportation hearings the Government lodged an additional charge under Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, 8 U. S. C. (1946 ed. Supp. V) 137–137.8, the findings disclose that the challenged deportation order was based upon the provisions of the statute as it stood prior to the 1950 Act (R. 25–27, 28, 29; and see also R. 13, 41 (fn. 2)).

by force and violence (R. 26–27). A warrant of deportation was issued on January 2, 1952 (R. 4–5, 13, 19).

After having been taken into custody for deportation, petitioner sought a writ of habeas corpus and declaratory relief in the District Court for the Western District of Washington, claiming the deportation order to be invalid (R. 1–8). She alleged that the statute upon which the deportation order was based was unconstitutional as violative of due process and of the prohibition against *ex post facto* laws, and that the findings on which the order was based were not in accord with the evidence (R. 5). An order to show cause issued (R. 9–11) and respondent, the District Director of Immigration and Naturalization, filed a return and answer (R. 12–20), which incorporated (R. 15) the record of the proceedings before the Immigration and Naturalization Service.

The District Court, holding that there was no jurisdiction over the action for a declaratory judgment, treated the petition as solely for a writ of habeas corpus (R. 27–28, 34–35). It found that the administrative findings were supported by substantial evidence (R. 28, 35–36); that the hearings were in accord with due process (R. 29, 37); and that the Act of October 16, 1918, as amended by the Alien Registration Act of 1940, under which the deportation order issued, was constitutional (R. 29, 38). Accordingly it ordered that the petition be dismissed and the order to show

cause discharged (R. 30). On appeal, the order was unanimously affirmed (R. 46), the Court of Appeals pointing out that the constitutionality of the statute had been determined by the decision of this Court in *Harisiades* v. *Shaughnessy,* 342 U. S. 580 (R. 44).

ARGUMENT

Review of the decision of the Court of Appeals is unnecessary because this Court, in *Harisiades* v. *Shaughnessy,* 342 U. S. 580, has already ruled upon and sustained the constitutional validity of the identical statutory provisions here challenged by petitioner. The controlling constitutional principles were thereafter reconsidered and reaffirmed when the validity of the similar provisions of Section 22 of the Internal Security Act of 1950, 8 U. S. C. (1946 ed. Supp. V) 137–137.8, was sustained in *Galvan* v. *Press,* 347 U. S. 522. The sole question raised by petitioner in her petition for certiorari is no different from those already determined in *Harisiades* and *Galvan.* Thus the petition is in effect an attempt to have this Court reconsider these two recent decisions.

While petitioner suggests the presence of a different fact situation (Pet. 4), no significant differences are either shown in the petition or are apparent from the record. Those whose deportation for former membership in subversive or Communist organizations was sustained in *Harisiades* and *Galvan* had all been legally admitted to this country for permanent residence, had all resided

continuously in the United States for many years, and had all subsequently joined the proscribed organization. There had likewise been no violation of any condition imposed as a basis for continued residence. Furthermore, petitioner did not claim at the deportation hearings or in the courts below, and does not claim in her petition to this Court that her membership in the Communist Party was "so nominal as to keep [her] out of the deportable class" or that she joined the Party "accidentally, artificially, or unconsciously in appearance only". See *Galvan* v. *Press,* 347 U. S. at 527, 528.

Petitioner's contention—that aliens cannot be deported for the commission of an act which Congress did not impose as a condition to continuation of permanent residence at the time of entry—is not, as petitioner claims, a new one. See *Carlson* v. *Landon,* 342 U. S. 524, 534–537. Furthermore, this argument has no application to petitioner's case. As this Court pointed out in *Harisiades,* 342 U. S. at p. 593: "During all the years since 1920 Congress has maintained a standing admonition to aliens, on pain of deportation, not to become members of any organization that advocates overthrow of the United States Government by force and violence, a category repeatedly held to include the Communist Party."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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